

CRITICAL PERSPECTIVES ON THE BURGER COURT

In response to Chief Justice Burger's visit to Harvard Law School, many law student organizations have wished to express their concerns and criticisms regarding the decisions of the Burger Court. In the following pages, a number of these organizations describe how Burger Court decisions have affected the areas in which they are involved. Though the topics differ, the theme remains constant: that the Burger Court has been consistently insensitive to the needs and aspirations of many elements of our society.

AD HOC COMMITTEE OF GAY LAW STUDENTS

Since Warren Burger was sworn in as Chief Justice of the United States Supreme Court, the Court has taken action in fifteen cases that directly involve the rights of gay men and women. The Court's handling of these cases demonstrates its appalling lack of sensitivity to the problems faced by gay men and women every day.

Eight of the fifteen cases involved discrimination against gay persons in the area of employment. The gay men and women involved in these cases were persons employed in the public sector, save for one instance where the plaintiff was the employee of a firm contracting with the government. The Court denied certiorari in seven of these cases, leaving undisturbed rulings that permitted gay men and women to be fired from their jobs and, in one case, a school board order requiring that a teacher, who had become president of a statewide gay organization, submit to a psychiatric exam. Only in one of these eight cases did the Supreme Court grant certiorari (Singer v. U.S. Civil Service Commission, 45 L.W. 3462). In Singer, the Court vacated a lower court judgment that substantial evidence existed to justify the firing of a gay person in the interest of promoting "efficiency" and remanded the case for reconsideration in light of a change in Civil Service employment policies. Chief Justice Burger dissented along with Justices White and Rehnquist.

The Burger Court has also acted in five cases involving the rights of gay persons to engage in private and consensual sexual acts. State action was challenged in all five cases. Certiorari was denied in four of them, while the fifth case was summarily affirmed with dissents recorded by Justices Brennan, Marshall and Stevens.

Finally, the Court dismissed, without hearing, the appeal of a gay person who challenged Minnesota's marriage laws, and denied certiorari in a case that involved a state college newspaper's refusal to accept paid advertisements from a gay student group.

Taken together, the Court's actions in cases directly affecting gay persons have been deplorable. We call on the Supreme Court to grant certiorari or appeal in appropriate cases and to recognize the rights of gay persons to be protected from discrimination.

BLACK LAW STUDENTS ORGANIZATION

The Burger Court has failed to respond to many of the major issues confronting the poor and minorities in present day America. The decisions of the Court often manifest an apparent lack of concern for the struggle for equality and opportunity being waged by America's disadvantaged. Listed below are short descriptions of some of the major decisions by the Burger Court which threaten to stymie the movement for social change in America:

Washington v. Davis, 426 U.S. 229 (1976). In Washington, the Court held that official action having a disproportionate impact on minorities does not, without more, constitute a violation of the Equal Protection Clause. Instead, minority plaintiffs are required to carry the substantial burden of proving that a "racially discriminatory purpose" existed before their constitutional rights can be vindicated. This evinces the unwillingness of the Burger Court to provide practical remedies for increasingly subtle discriminatory practices.

Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977). In this challenge to a zoning ordinance which barred the construction of low-income housing in a Chicago suburb, the Court reiterated the Washington intent standard. This opinion severely hampers the ability of blacks and other minorities to attack racially discriminatory zoning ordinances designed to exclude them from entire communities.

Milliken v. Bradley, 418 U.S. 717 (1974). In Milliken, the Court held that the Constitution did not sanction an inter-district remedy designed to eliminate de jure discrimination found to exist in the school district of Detroit. Once again, the Court ignores the realities of modern America; viz., that meaningful school desegregation can only be accomplished across district lines. The court chooses to place great weight on the somewhat amorphous value of "local control" at the expense of the clear, express constitutional rights of minorities.

International Brotherhood of Teamsters v. United States, 431 U.S. ____ (1977). This case held that "an otherwise neutral, legitimate system does not become unlawful under Title VII simply because it may perpetuate pre-Act discrimination." It had been the unanimous opinion of the eight Courts of Appeals which had decided the issue that such systems were unlawful. This unwarranted limitation of an express Congressional mandate against discrimination in employment will have the obvious effect of "locking in" the effects of the very discrimination which the statute was aimed at eliminating.

Warth v. Seldin, 422 U.S. 490 (1975). In Warth, the Court established a rule of standing for plaintiffs who seek to challenge exclusionary zoning ordinances. In substance, the holding of the Court is that in order for minorities or other lower-income persons to obtain access to the federal courts,

they must first produce a specific construction project. This opinion ignores the realities of the construction industry which militate against the initiation of such projects under hostile conditions. [Cf. Simon v. Eastern Kentucky Welfare Rights Organization, 96 S.Ct. 1917 (1976).]

Cases like Warth and Simon represent perhaps the most dangerous trend of the Burger Court decisions. These cases illustrate the desire of the Burger Court to bar the disadvantaged and those who are interested in social reform from the federal courts.

COMMITTEE ON MILITARY JUSTICE

In the eight years that Warren Burger has been Chief Justice of the United States Supreme Court, the Court has handed down many important decisions dealing with the Constitutional rights of persons in the Armed Forces.

For the most part, these decisions have followed established doctrines severely restricting the rights of servicemen and women because of "particularized," but rarely defined needs of the military.

In Parker v. Levy, 417 U.S. 733, 94 S.Ct. 2547 (1974), for example, the Court ruled that Articles 133 and 134, Uniform Code of Military Justice, which proscribe conduct "unbecoming an officer and gentleman" and "disorders and neglects to the prejudice of good order and discipline" were neither unconstitutionally vague nor facially invalid because of overbreadth. Justices Stewart, Douglas and Brennan dissented. As one dissent pointed out, the Articles operate as catch-alls that deny servicemen and women "the right to be informed as to precisely what conduct is proscribed before (s/he) can be criminally punished for [their violation]."

Not all of the Burger Court decisions in the area of military law have followed precedent. In one case, the majority found that federal military reservation regulations which banned political speeches and demonstrations and governed the distribution of literature were not constitutionally invalid on their face. Greer v. Spock, 24 U.S. 828, 96 S.Ct. 1211 (1976). In doing so, the Court overruled sub silentio Flower v. U.S., 407 U.S. 197, 92 S.Ct. 1842 (1972), where the Court had held that a peaceful leafleter could not be excluded from the main street of a military installation as to which the civilian public had been permitted virtually unrestricted access. Justice Rehnquist, who along with Chief Justice Burger had dissented in Flower, wrote for the majority with Justices Brennan and Marshall dissenting.

Another case worth mention is Middendorf v. Henry, 425 U.S. 24, 96 S.Ct. 1281 (1976), where the majority held that accused persons were not entitled to counsel in summary courts-martial either under the Sixth Amendment or the Fifth Amendment's

Due Process Clause. Fortunately, the effect of that decision has been limited by U.S. v. Booker, 3 M.J.443 (CMA 1977), where the U.S. Court of Military Appeals held that under Middendorf v. Henry, it was necessary to limit summary courts-martial to disciplinary actions concerned solely with minor military offenses unknown to civilian society.

The Committee on Military Justice believes that the Supreme Court has failed to explain what particular necessities peculiar to the military justify an abridgment of the rights of men and women serving in the Armed Forces. It is time the Court recognized that the mere intonation of the words "military necessity" contributes little to a rational analysis of how explicit requirements of a military force should be balanced against important individual rights.

HARVARD COMMUNITY AGAINST THE DEATH PENALTY

The most blatant denigration of basic human rights in our country came in the Burger Court's 1976 legitimization of capital punishment. In 1972, the Supreme Court held that capital punishment statutes then in use were unconstitutional because of their discriminatory application to minorities (Furman v. Georgia). However, last year (Gregg v. Georgia and companion cases), the Court held that states could impose the death penalty under statutory schemes designed to eliminate the arbitrary and discriminatory imposition of death sentences.

The Gregg decision was based on a willful ignorance of more than ample data disproving any positive deterrent effects. More significant on a societal level, however, was the decision's claimed basis in public support of capital punishment. Here, the majority adopted the position of "passive speaker" and ignored the Court's powerful role as a leader and designator of basic human values for our citizens, be the issues Eighth Amendment or First Amendment. The Court avoided the logical asymmetry both in the constitutionalization of the act of killing and in the legitimization of revenge as a component of a decent, humane society.

In cases since Gregg, the Court has shown indications of a higher standard of due process in capital cases (e.g. Gardner v. Florida) and prohibited capital punishment for some crimes less than first degree murder (e.g. Coker v. Georgia, capital punishment unconstitutional for rape). However, the Court has failed subsequently to recognize an increased federal responsibility for the review of death sentences to assure their equal and nondiscriminatory application -- the very basis of legitimization -- by refusing to review death sentences brought before it. The court has thus created a wholesale delegation, even invitation, for states to return to those very practices denounced by Furman v. Georgia in 1972. Any close examination of the manner in which the approved statutory schemes are being applied points to the conclusion that the current practices are but thinly glossed continuations of the historical abuses of

capital punishment. (Indeed, how can we expect that a racist culture will function in a truly non-racist manner?) The Court should utilize the vision presumably afforded by its lofty position in a manner that will lead to a society that is truly sensitive, humane and egalitarian.

HARVARD GOVERNMENT ATTORNEYS PROJECT

The Harvard Government Attorneys Project is concerned with the fair administration of justice in the United States. The fair administration of justice demands that citizens whose claims go unredressed by the political process be given a suitable forum in which to have a fair hearing. The state courts do not bear the same solicitude for federal constitutional claims as do federal courts, especially when the redress of those claims would impede established state practices. Therefore, we are particularly distressed about recent Supreme Court decisions which have restricted access to the federal courts by citizens seeking redress for infringement of constitutional rights. We hope that future Supreme Court decisions will enhance rather than curtail the fair administration of justice.

HARVARD LAW GUILD

The Burger Court has paid respectful attention to the interests of business and finance, and has cut back substantially on the rights of those lacking ties to our corporate elite.

Burger Court opinions have drastically restricted citizens' access to the courts to remedy illegal government action. See, e.g., Simon v. Eastern Kentucky Welfare Rights Organization, 96 S.Ct. 1919. They have supported the rights of property against labor, see Hudgens v. N.L.R.B., 96 S.Ct. 1029; of creditor against debtor, see Mitchell v. W. W. Grant Co., 416 U.S. 600, or landlord against tenant, see Lindsey v. Normet, 405 U.S. 56. They have held that a public employee may be arbitrarily fired without a hearing, Bishop v. Wood, 96 S.Ct. 2024. They have hampered job opportunities for black and third world people, see Washington v. Davis, 96 S.Ct. 2040. They have permitted police departments to run roughshod over the rights of citizens without redress, see Rizzo v. Goode, 420 U.S. 1003. They have eviscerated the First Amendment, see Graer v. Spock, 96 S.Ct. 1211, and Fourth Amendment, see Stone v. Powell, 96 S.Ct. 3037, and the Fifth Amendment, see Baxter v. Palmigiano, 95 S.Ct. 1551.

Chief Justice Burger has spoken extensively about our "overburdened courts," see e.g., Burger, Observations on the Report of the Federal Judicial Center Study Group on the Caseload of the Supreme Court, and has made every effort to limit access on the part of those with "petty" grievances--the unemployed, the welfare recipient, the worker who has been unjustly fired, the free citizen or prisoner who has been beaten by police or prison officials. He has done nothing to deter the dilatory tactics of and IBM or other large corporations that may monopolize a single court for years. The reasons are obvious. Justice Burger, like

his "brothers" on the Nixon Court, sees our huge corporations as having first priority in our adjudicatory system. Money and power--not justice--underlie the Burger Court's decisions and attitudes.

HARVARD LEGAL AID BUREAU

Under the leadership of Chief Justice Burger, the Supreme Court has adopted an attitude toward the poor which has been both callous and ignorant of the realities of poverty. The Burger Court has totally ignored the foundation laid by the preceding court for a legal structure which could have addressed the special needs and vulnerabilities of the poor in our society. The Court has refused to strike down purely financial barriers, such as court fees, which prevent the poor from even being able to assert their legal rights. See, e.g., United States v. Kras, 409 U.S. 434 (1973), and Ortwein v. Schwab, 410 U.S. 656 (1973). Instead, it has flatly refused to acknowledge the poor as a class isolated and confined in its poverty by the inequalities of our legal and economic system and it has failed to recognize and protect the fundamental rights which are the only hope that the poor have for breaking free from their poverty. San Antonio School District v. Rodriguez, 411 U.S. 1 (1973).

Not only has the Burger Court rejected the progressive vision which it inherited, it has actually cut back on established rights and procedures which had previously protected the poor from arbitrary and discriminatory actions of government officials and bureaucracies. In cutting back on the protection of a hearing afforded by Fuentes v. Shevin, 407 U.S. 67 (1972) and Goldberg v. Kelly, 397 U.S. 254 (1970), the Burger Court has allowed for the prejudgement attachment of property, Mitchell v. W.T. Grant Co., 416 U.S. 600 (1974) and the pre-hearing termination of social security disability payments, Mathews v. Eldridge, 424 U.S. 319 (1977).

The Burger Court's decisions, acquiescing in discrimination against minorities and women, fall most heavily on poor minorities and poor women. The poor are most seriously affected by housing and employment discrimination. Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977); Washington v. Davis, 426 U.S. 229 (1976). Where the Court declined to find that the states or the federal government had an obligation to pay for abortions with medicaid funds, Poelker v. Doe ___ U.S. ___, 53 L.Ed.2d 484 (1977), poor women are the group seriously harmed.

But the most alarming of all the Burger Court's actions against the poor, and the one for which Chief Justice Burger is perhaps most responsible, is the foreclosure of poor's access to the federal court. Simon v. Kentucky Welfare Rights Organization, 426 U.S. 26, and Warth v. Seldin, 422 U.S. 490 (1975). His judicial rhetoric and public pronouncements decrying overcrowding of federal court dockets is translating into use of technical legal doctrines to keep out the kinds of cases which poor people bring to the courts. Since poor people lack the political power to protect

their interests in legislative and executive processes, this foreclosure of access to the courts cuts off the only means of considering and redressing the plight of the poor.

HARVARD VOLUNTARY DEFENDERS

The tenure of the Burger Court has brought about significant changes for the criminal defendant. In most cases, rights have been shortchanged. For instance, the death penalty is now a reality in the U.S. with the Court's decisions of Gregg v. Florida, 428 U.S. 153 (1976); Proffitt v. Florida, 428 U.S. 242 (1976), and Jurek v. Texas, 428 U.S. 262 (1976).

The Burger Court has also made significant changes in the area of search and seizure. The Court has held that the police may make a warrantless search of an automobile which has been brought back to the police station even though it was possible to obtain a search warrant. Chambers v. Maroney, 399 U.S. 42 (1970). A police officer may make a full search of the accused's person after making an arrest, even though there is no likelihood that the accused has either evidence or a weapon on his person. U.S. v. Robinson, 414 U.S. 218 (1973). The Burger Court has shown little sensitivity to the right to privacy that a person may expect.

Finally, a prior statement of the defendant, made without the prior administration of his/her Miranda warnings, may be used to impeach the defendant should the defendant choose to testify. Harris v. New York, 401 U.S. 222 (1971). This ruling of the Court is inconsistent with the purpose of the Miranda doctrine and places an undue burden on the defendant's choice to testify.

LAW SCHOOL COUNCIL

As the Law School Council, we join other groups in expressing our dismay with the Burger Court.

I. We do not take issue with Chief Justice Burger's presence on campus, nor do we condone any attempt to disrupt the Ames Final Argument at which he will preside. However, such a disruption is not really at issue here; the real question is whether this law school environment encourages students to discuss and express their views on major social and political issues. Administrative overreaction to the planned protests puts an inappropriate "chill" on student expression and shows little faith in the good judgment of students.

II. We would like to express our outrage at the consistent opposition the Supreme Court under Chief Justice Burger has shown toward the advancement of civil rights in recent years. The Court has treated with insensitivity issues of great importance to minorities', women's, and prisoners' rights.

We recoil at the assertion that the Supreme Court is the "least dangerous branch," especially in the wake of recent decisions. Indeed, the Court has made decisions which have undermined the

gains of many years of political organizing and litigation in its policies that are ostensibly based on non-political principles. Under the influence of Chief Justice Burger, the Court has generally served to restrict, if not deny, access by private citizens to federal courts. With this we cannot agree.

PRISON LEGAL ASSISTANCE PROJECT

Prisoners in America were long ignored when they sought relief from cruel and unjust prison conditions and practices. The judiciary espoused a "hands off" doctrine and deferred to the prison official's unbridled discretion in the treatment of the confined.

It has only been during the last decade that the lower federal courts have recognized that inmates too deserve humane treatment as persons protected by the Constitution and federal laws from arbitrary deprivation of rights and dignity. However, while the Burger Court has abstractly asserted this general principle that inmates do not lose all their rights upon incarceration, it has only grudgingly and tentatively granted due process rights at institutional hearings and has, in fact, cut off inmates' access to the courts for redress of unlawful acts by prison officials.

In the 1973 case, Preiser v. Rodriguez, the Burger Court erected a procedural stumbling block to certain prisoner suits under Section 1983 of the federal civil rights laws. By requiring exhaustion of state habeas corpus remedies, the Court cut off one avenue of initial challenge to the alleged unlawful acts of prison officials. That the court, fearful of the recent flood of prisoner litigation may be seeking to limit prisoner access to federal review is arguably a message between the lines.

In the 1976 case Baxter v. Palmigiano the Supreme Court confirmed that the due process given inmates at disciplinary hearings by its decision in Wolff v. McDonald (1974) was intended as very minimum protection and, in most respects, subject to the broad discretion of prison officials. Specifically, in Baxter, the Court supported the Disciplinary Board's drawing of an adverse inference from an inmate's exercise of his right to remain silent.

In Meachum v. Fano (1976) and its companion case Montanye v. Haymes, the Burger Court held that a prisoner has no due process right to a hearing prior to being transferred to a prison where conditions are "substantially less favorable." Significantly, the Court did not rely on a finding that the transfer was an insignificant deprivation or loss to the prisoner; rather, the Court argued that absent a state law creating a justifiable expectation that the inmate would not be transferred, he had no liberty interest which deserved due process protection.

The Burger Court has also cut back on inmates' First Amendment rights. In Jones v. North Carolina Prisoners' Labor Union (1977), the Court upheld a prison administration's suppression of an inmates' union formed for charitable purposes, grievance resolution and collective bargaining in the prison industries. Most objectionable, the Court based its holding on prison official's

unsubstantiated fears which "had not been conclusively shown to be wrong." No showing of reasonable relationship between state interests and the deprivation of inmate rights was required.

We of the Prison Legal Assistance Project are concerned that basic human rights be preserved by the state when it confines people for criminal offenses, that justice be one so that prisoners are not degraded and embittered by confinement, and that the discretion of prison officials be reviewable by the courts.

We call for the Supreme Court under the leadership of Chief Justice Burger to move forward--not retrenching or closing the door to just claims--in the protection of prisoner rights; to act on its mandate to uphold the constitutional rights of all persons.

STUDENTS FOR PUBLIC INTEREST LAW

The Burger Court has been inhospitable to many important public interest law issues. Recent decisions have created a thicket of subtle and often contradictory rules that deny access to the federal courts for many ordinary citizens by narrowing the definition of what is a justiciable controversy and who has standing to sue, by enervating the class action device, and by denying attorney fees in cases which vindicate important public policies, but which do not produce damages from which reasonable legal fees can be paid.

The Burger Court has made it financially unfeasible to litigate many important public interest cases. Congress has adopted the policy of encouraging private enforcement of statutorily created rights by authorizing awards of attorney's fees to successful plaintiffs in a number of areas, including civil rights and environmental protection. In addition, until May 1975, nine federal appellate courts had exercised their presumed equitable power to award attorney's fees in public interest cases without specific statutory authorization, on the basis of the "private attorney general" theory, in recognition that private litigants whose successful law suits enforced federal law and conferred substantial public benefits should not be forced to bear the financial burden of achieving these results. But the Supreme Court, in Alyeska Pipeline Co. v. Wilderness Society, 421 U.S. 240 (1975), rejected the "private attorney general" theory as a basis for fee awards in the federal courts. The use of the courts' equitable power to award fees in successfully prosecuted public interest cases is an important means of increasing citizen access to justice, promoting the orderly resolution of important disputes, and vindicating constitutional rights and Congressional policies. By denying attorney's fees in important public interest cases, the Court is denying access to justice.

Recent Supreme Court decisions have severely undermined the utility of the class action, by interpreting the Rules' jurisdictional requirements [see Snyder v. Harris, 394 U.S. 332 (1969), and Zahn v. International Paper, 414 U.S. 291 (1973)], notice provisions [see Eisen v. Carlisle & Jacquelin, 417 U.S. 156 (1974)] and the like in ways that make the class action unavailable to

those whom it was designed to benefit.

The Court has further denied access to the courts by fostering a trend toward an elaboration of the technical rules of standing, ripeness, sovereign immunity, and exhaustion of administrative remedies. A substantial number of important cases involving aggrieved parties prepared to litigate issues on the merits have been dismissed by the federal courts on technical grounds under new, shifting, and progressively more stringent procedural rulings. In consequence, many citizens, including minorities, the poor, and the victims of official abuses, have been left without judicial remedies. As the courts have turned from the substance of justice to the niceties of pleading, citizens have found greater cause for dissatisfaction with the administration of justice. (See, The Council for Public Interest Law's Balancing the Scales of Justice.)

Students for Public Interest Law believes it is critical that these trends be reversed in order to allow important public interests access to justice.

WOMEN'S LAW ASSOCIATION

"Pregnant Women and Non-Pregnant Persons"

The attitude of the Burger Court toward women can be seen by focusing on two recent decisions dealing with disability insurance plans. Geduldig v. Aiello, 417 U.S. 484 (1974), involved an equal protection challenge to a California statute providing disability insurance for all workers within the state with, however, pregnancy excluded from coverage. The Court held that the state had a legitimate interest (in this case fiscal) which justified the exclusion. Without a showing that "distinctions involving pregnancy are mere pretexts designed to effect an invidious discrimination" against one sex or the other, the state legislature is free to exclude or include pregnancy from coverage "on any reasonable basis, just as with respect to any other physical condition." A pregnancy classification is, therefore, not necessarily sex-based but based upon disability. In 1976, the Court imported the equal protection standard of invidious discrimination and the logic (sic) of Geduldig into its decision in General Electric Company v. Gilbert, 97 S.Ct. 401. That case involved not a constitutional claim, but a challenge to the GE disability plan (which excluded disabilities arising from pregnancy) as a violation of Title VII of the Civil Rights Act of 1964. According to the Court, the requisite showing of gender based effect was not made. The Court seizes upon an insight from Geduldig: "There is no risk from which men are protected and women are not. Likewise, there is no risk from which women are protected and men are not." Pregnant men would not be able to receive disability benefits either. Women, however, would be able to receive disability payments for their circumscisions and vasectomies, both of which are covered under the plan. The analysis of Geduldig and Gilbert may severely limit Title VII as a means of attacking pregnancy-related discrimination. With its use of equal protection case law to define "discrimination," the Court

significantly increases plaintiffs' burden of proving a prima facie violations of the statutory prohibition against discrimination in Title VII.

CHICANO LAW STUDENTS' ASSOCIATION
COMMITTEE ON CHICANO LEGAL ISSUES

We, the Chicano Law Students Association and the Committee on Chicano Legal Issues join with the other groups herein represented to protest the policies which Chief Justice Burger represents.

We are especially concerned with the dilution of the Civil Rights Laws and the Fourteenth Amendment of our Constitution, as safeguards against racial and ethnic discrimination. The new intent requirements place an insurmountable obstacle to many legitimate claims that should be heard and responded to by courts throughout this country. If federal courts are not responsive to claims of minority peoples in the area of employment discrimination, education and housing then status equality will probably not occur in this nation. To the millions of Chicanos, Puerto Ricans, Asian Americans, Native Americans and Blacks the word justice must mean more than equality of treatment is a system permeated with invidious past and present discrimination.

We are also concerned with minority peoples' Fourth Amendment rights, Prisoner's rights, political participation rights and Due Process guarantees that are continuously violated in this country. These rights have been further weakened by Burger Court opinions, having a grossly disproportionate effect on minorities. Given that this country projects itself as a leader of human rights in the world, this unequal citizenship extended to certain minority groups reflects a deep hypocrisy. During the Warren Court era, a hope was rekindled that this country was attempting to attain its ideals of equality, although long ignored. Now, that hope swindles and the word Justice may have meaning only for those privileged under the status quo.

We assert anew what Professor Charles Black stated in the sities concerning racial relations in this country: It is not merely a visceral national problem that we must deal with, but a "sweating national shame." For an institution that pretends to administer "Justice", neglect in this area is inexcusable--perhaps immoral.



Dear Gay Community News Subscriber,

August 21, 1981

This is an emergency appeal for funds from the Gay & Lesbian Advocates & Defenders, Inc. (G.L.A.D.). G.L.A.D. is a non-profit, tax-exempt legal defense organization. Our objectives are to educate the gay community and the public at large about the civil rights of gay people and to vindicate those rights.

The rampant homophobia which exists in the present criminal justice system makes it almost impossible for gay people to receive equal justice under the law. Until recently, those accused of "gay" crimes had no where to turn for legal assistance. G.L.A.D. was formed in 1978 to meet the urgent needs of gay people in crisis in the legal system.

G.L.A.D.'s major concerns include defending the right of gay parents to retain custody of their children, battling police harassment and entrapment- in short, defending the rights of gay people against a legal system which views our sexuality as criminal.

In the past, lesbians and gay men simply gave up all chance of obtaining custody of their children out of fear that judges would presumably rule against them. For the first time, it is becoming worthwhile for gay people to fight for the right to raise their own children. Recently, G.L.A.D., along with Custody Action for Lesbian Mothers (CALM) of Philadelphia, filed an amici curiae brief in the lesbian/child custody case of Bezio v. Patenaude arguing that homosexuality does not make a parent unfit. The court agreed and in a landmark decision rejected the lower court's opinion that a lesbian household creates an element of instability that would adversely affect the welfare of the children. But the decision to publicly wage a battle for custody still requires an amazing amount of strength and courage...and money.

Another important case G.L.A.D. handled recently was that of Anderson v. White. The City of Boston sought to prevent the Boston Lesbian & Gay Pride March from taking place on its accustomed and agreed-upon route. G.L.A.D. sued on behalf of the Pride Committee and won in both the

Gay and Lesbian Advocates and Defenders

Park Square Advocates, Inc., 2 Park Square, Boston MA 02116

lower court and the appellate court.

This is not enough. G.L.A.D. wants to do more in such areas as housing discrimination; military discharges; criminal law; occupational licensing; freedom of speech, association and press, and other civil liberties issues. To do more requires more financial support.

The demand for legal representation is overwhelming, but litigation is expensive. Money is needed to cover court costs, research materials and administrative expenses. All of these costs must be met by donations from concerned individuals.

Across the country, litigation and legislation, good and bad, are affecting the rights of lesbians and gay men. The degree to which the resulting law is favorable to the gay community depends on the degree to which G.L.A.D. and other public interest law firms are involved in the court battles.

Contributions are G.L.A.D.'s only source of income. We have not been receiving enough money to maintain our present level of operation. In fact, we are in a state of fiscal crisis.

NOT ONE CENT OF YOUR MONEY GOES TO PAY LAWYERS'S FEES!
ALL LEGAL TIME IS DONATED BY G.L.A.D.'S PARTICIPATING ATTORNEYS, so we stretch your donations a long way. We would like to thank those who have given so generously in the past. Without this generosity we would not be functioning today.

CONTRIBUTIONS TO G.L.A.D. ARE TAX DEDUCTIBLE!!!

HELP US HELP ALL OF US.

Thank you, Thank you,

Richard Burns Jose Gomez, Esq. Cindy Rizzo, Esq.

Margaret Feary, Esq. Ed Hougen Jim Mullane

Brian McNaught Charley Shively Bobby Stevens

John Ward, Esq. Tim Stein

The G.L.A.D. Board of Directors

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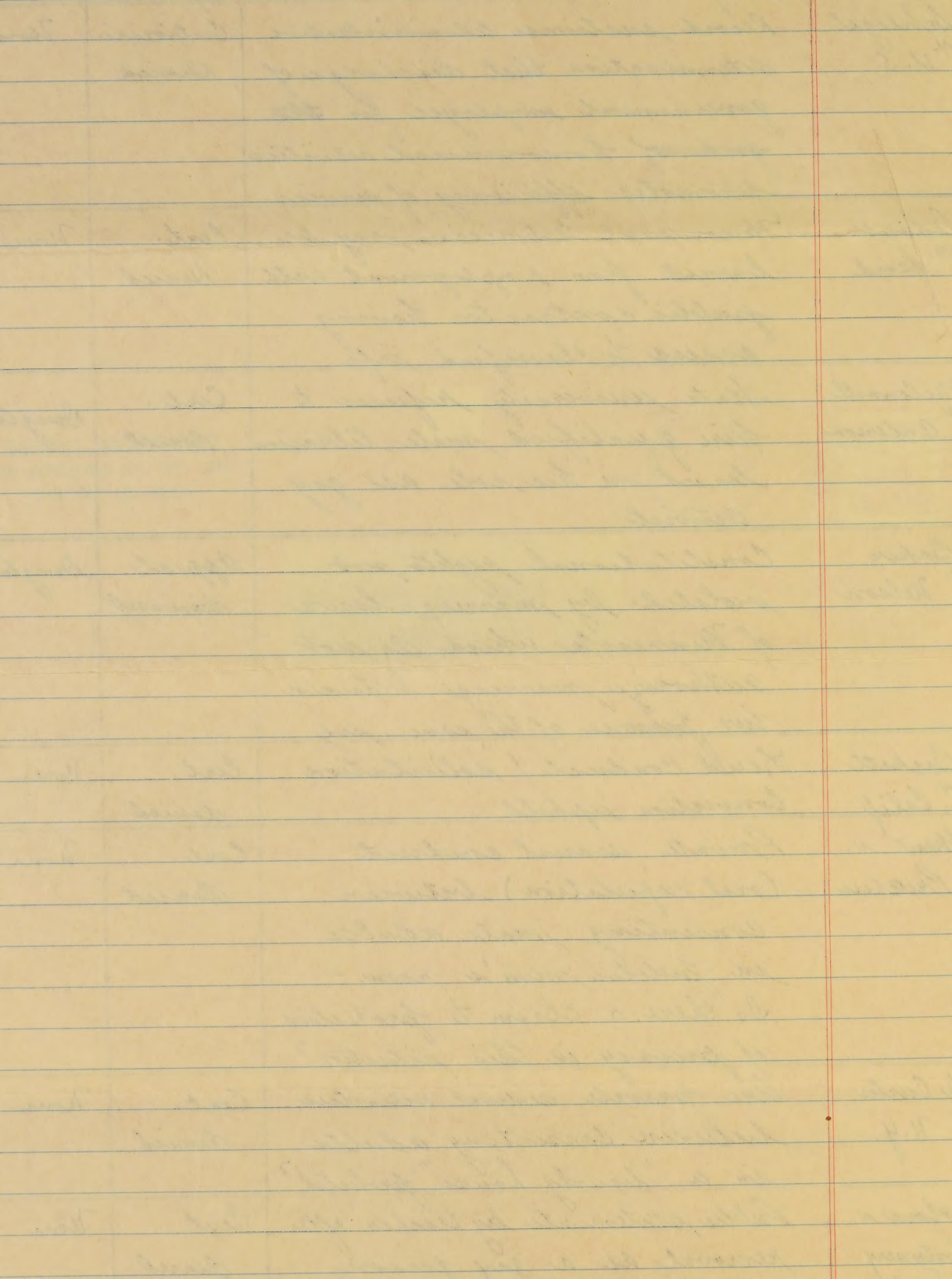
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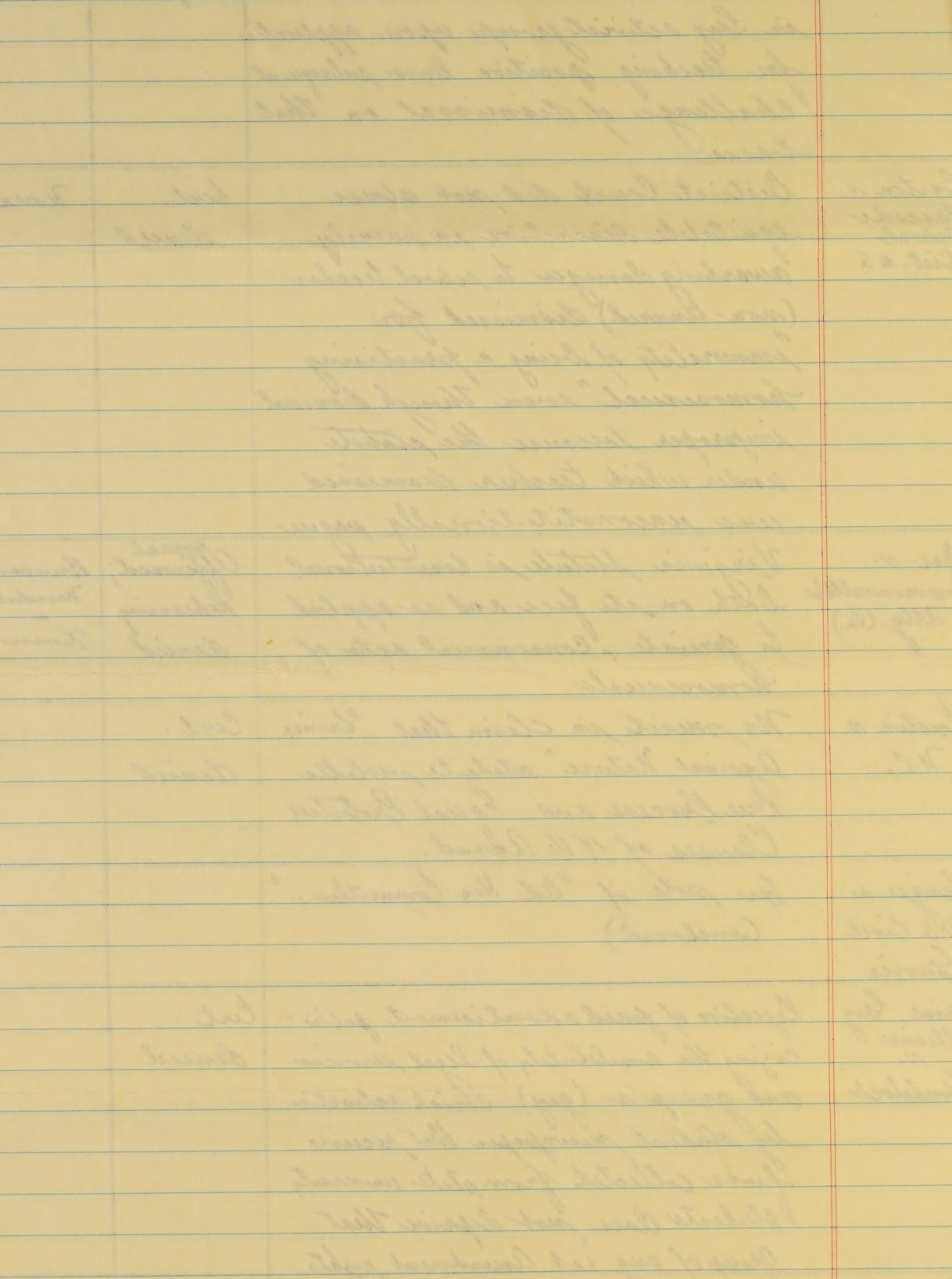
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Case Name	Subject Matter	Disposition	Dissent
Schlegel v. U. S.	Record sustains administrative determination that discharge of government employee for the good of homosexual activities promotes efficiency of service	Certiorari Denied	None
Adams v. Laird	Homosexual technician may be barred from employment with public contractor having access to classified info	Cert. Denied	None
McConnell v. Anderson	State university refuses to hire qualified male librarian based on his role as gay activist	Cert. denied	Douglas
Baker v. Nelson	Constitutional rights not violated by marriage laws of Minnesota which do not authorize marriage between two persons of the same sex.	Appeal dismissed	Douglas
Baskett v. Calif.	Lewd Conduct / Solicitation Conviction upheld	Cert. denied	None
Gonz v. Pritchett	Private sexual conduct (oral copulation) between consenting male adults in public men's room - Is there a claim to protection of privacy in this situation?	Cert. denied	None
De Curtis v. N.Y.	Are private sexual activities between consenting adults in a "bawdy house" protected?	Cert. denied	None
Acafora v. Montgomery County Board of Ed.	Public statements by teacher after removal as a gay person protected by 1st Amendment and not basis for removal or dismissal of suit challenging same, but failure of the petitioner to list membership	Cert. denied	None



Case Name	Subject Matter	Disposition	Dissent
	in Gay activist group upon application for teaching position bars subsequent challenge of dismissal on that basis.		
Barton v. Cascade School Dist. # 5	District Court did not abuse equitable discretion in merely awarding damages to school teacher (non-tenured) dismissed for "immorality of being a practising homosexual" even though dismissal improper because the statute under which teacher dismissed was unconstitutionally vague	Cert. denied	None
Ose v. Commonwealth's Atty (Va.)	Virginia Statute is constitutional both on its face and as applied to private, consensual acts of homosexuals.	Appeal Affirmed; Rehearing denied	Brennan, Marshall & Stevens
Enslin v. N.C.	No merit in claim that "Crime Against Nature" statute violates Due Process and Equal Protection Clauses of 14th Amend.	Cert. denied	
Singer v. U.S. Civil Service	See note of "Ad Hoc Committee..." (enclosed)		
Miss. Gay Alliance v. Goudelock	Rejection of paid advertisement publicizing the availability of legal services and group's (gay) social activities by student newspaper that receives funds collected from state university students does not deprive that group of any 1st Amendment rights	Cert. denied	
Gish v. Board of Ed of Paramus	Public School Board order requiring teacher, who became president of statewide gay rights org. and participated in public promotion of same, to submit to psychiatric exam.	Cert. denied	



Case Name	Subject Matter	Disposition	Decision
Gaylord v. Tacoma	Status as "known and admitted homosexual" sufficiently impairs fitness to allow dismissal of the teacher under school board policy of discharging homosexuals for "immorality".	Cert. denied	Bronnan + Marshall

What denial of certiorari means essentially is that the court is either not interested in gay issues generally or in the issue as presented in these particular cases. The decision as to whether to hear cases that come to the court on a petition for a writ of certiorari is entirely discretionary. There are 12 denials in all.

The case where certiorari was granted is noted in the "Ad Hoc..." statement.

The other two cases involve appeal. This is a second way of getting a case before the court. The right to get before the Court under an appeal is a qualified absolute; That is, they have to open the door, but they do not have to hear argument or

issue an opinion. When an appeal is dismissed, as in Baker v. Nelson, it has ~~the~~ the same effect as a denial of certiorari.

I hope this information is of some assistance to you, even if you do not have occasion to incorporate it to any great extent.

I look forward to seeing you on Wednesday evening.

Sincerely,

Paul John

11/13/77

Marge Ragone
5 Junction St.
Providence, R.I.

02907

Dear Marge:

Enclosed is a copy of a handout that will be distributed Wednesday and Thursday nights at the teach-in, demonstration and Ames Final Argument, at which Chief Justice Burger will preside.

The handout, entitled "Critical Perspectives on the Burger Court," covers a broad series of topics and cases of direct relevance to Wednesday's planned session.

Of particular interest is the offering of the "Ad Hoc Committee of Gay Law Students" (me!). This section is really a boiled down version of my research into the cases dealing with gay persons' rights that have come before the court.

It is my intention to give you a little more background into the cases, which may provide some grist for your talk. Another member of our organizing group has sent a letter to you addressing the format and scope of the teach-in, so I will not deal with ~~that~~ those issues.

